SAUL EWING

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Esports and the Law

News, case summaries, articles, and strategies concerning esports and the law

Playing to Win: Skillz Again Takes On The Bots

By Andres Castillo, of Saul Ewing

Back in April 2026, Skillz won a judgment of $420 Million against Papaya Gaming, based on Papaya's proven use of 'bots' (i.e., non-human players) in its online real-money tournaments and skill contests. On July 27, 2026, Judge Cote of the Southern District of New York increased that award to $719 Million, and threw in another $10 Million to cover Skillz' attorneys' fees. In July 2024, Skillz brought another suit over bot usage against Voodoo. Like Skillz, Voodoo is a mobile gaming platform that offers cash games and real-money tournaments to users.

Skillz's CEO, Andrew Paradise, has said that the lawsuit against Voodoo is part of Skillz' campaign to call out "the deceptive usage of bots until systematic fraud in our industry is eliminated." Indeed, Skillz also filed suit against AviaGames in April 2021, alleging in part that AviaGames defrauded users through its bot usage.

Skillz' claims against Voodoo are based on Voodoo's operation of its "Blitz Win Cash" application. The complaint alleges that Voodoo's characterization of the application as "fair," "skills-based," and bot-free constitutes false advertising in violation of Federal and New York State law. These claims are similar, if not

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New Horizon, Same Problems: Why The Story Matters

By Veronica McCarty, of Saul Ewing

No one in the gaming community was shocked when Sony filed its lawsuit alleging copyright and trademark infringement against Tencent in July 2025. Sony's Horizon Zero Dawn game had been released in 2017, and was a huge success, spawning a franchise that even included a LEGO Horizon Adventures spin-off (a true hallmark of success). The game focused on a specific post-apocalyptic world with overgrown foliage and a distinct biomechanical aesthetic, including "Machines" that are mechanical, armored animals. The world has distinct tribes, sounds, and mechanics, and at the center of it all is a red-haired protagonist named "Aloy" with tribal-attire and distinct facial markings. All copyrights had been obtained and in use since 2017, although notably Sony only had common law trademarks for the Aloy character.

What the *Horizon* Franchise did not have, however, was a mobile video game. In March 2024, the Tencent defendants approached Sony at a Developers Conference in San Francisco. They promoted themselves as "die-hard fans"

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Editor's Note: "Physical Media: The Reports Of My Death Have Been Greatly Exaggerated"

Many people might not realize that what Mark Twain actually said in 1897 was "The report of my death was an exaggeration." He was referring to a news story about his imminent demise in London, but the reporter had confused him with his cousin. Not much has changed in over 100 years, we still get social media posts about 'fake' deaths all the time. But, in this case, Sony's move away from physical discs for video games seems true enough. The public backlash has been loud, and Microsoft has recently fired back, saying they will now allow Xbox Insiders to convert supported physical Xbox One and Series X game discs into digital licenses that the user controls. The key issue is control – right now, the owner of a physical discs has a larger measure of control – we have to make sure that control exists in the digital world. I personally believe the move presents a tremendous opportunity for publishers to create 'limited run' physical copies for the collectors that want them. The move away from physical media will be an ongoing debate for the foreseeable future, and I discuss both sides with our Managing Editor.

A big congratulations to my friend and fellow Editor, Jeffrey Levine, who made the move to La Salle University recently. La Salle is lucky to have him. In this issue, Jeff and Lindsey Darvin from Syracuse University cover the murky issue of how Title IX applies to sex-based harassment in collegiate sports.

We provide an update on the ongoing litigation between online gambling platforms Skillz and Papaya Gaming, where Skillz just took home over $700 Million based on their proof that Papaya was using 'bots' in online real-money tournaments. In her first article for Esports & The Law, my colleague and avid gamer Veronica McCarty takes on the interesting copyright case of Horizon: Zero Dawn vs. Light of Motiram. We examine the recent U.S. litigation involving loot boxes, including a new class action filing in Washington. Caroline Nogueira Costa highlights an interesting issue relating to Name Image Likeness (NIL) rights in Brazil, and why it created a problem for a certain footballer in the EA Sports FC video game.

Finally, we interview the Director of Esports Competition at Syracuse University, Travis Yang, and get his take on the current state of collegiate esports.

In the classic words of one of my heroes, Stan Lee, Excelsior!

Darius C. Gambino, Editor-In Chief.

Who Governs the Server? A Practical Two-Axis Title IX Framework for Collegiate Esports

By Jeffrey Levine – Assistant Professor, Sport Management, Department of Management and Leadership, School of Business, La Salle University and Lindsey Darvin – Assistant Professor, Department of Sport Management, Falk College of Sport, Syracuse University

Jeffrey Levine

Consider a familiar collegiate esports scenario. During team practice, a player experiences repeated sex-based harassment in an official team Discord. She tells a student captain, who advises her to mute the teammate and avoid the voice channel. The esports director later dismisses the conduct as ordinary gaming toxicity. Because Discord is a third-party platform, the matter is treated as a platform problem.

Although hypothetical, the scenario reflects a significant governance problem in collegiate esports that could result in legal exposure.

Collegiate esports operates across gaming facilities, Discord servers, voice channels, livestreams, recruitment messages, tournament systems, and publisher-controlled games. Universities may select rosters, hire staff, award scholarships, require particular platforms, and control official channels. Core competition, however, may occur through systems the university cannot alter. Institutional control therefore varies across people and digital settings.

Whether esports qualifies as intercollegiate athletics, a recurring debate in collegiate esports, does not resolve the harassment question. Title IX states that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance" (20 U.S.C. § 1681(a)).

___A university operated esports program may still be part of the institution's education program or activity and therefore fall within Title IX's reach for sex-based harassment. For a private-damages action involving student-on-student harassment, *Davis v. Monroe County Board of Education*, building on *Gebser v. Lago Vista Independent School District*, requires, among other elements, substantial control over both the alleged harasser and the context, actual notice to an official with corrective authority, and deliberate indifference (a response clearly unreasonable in light of known circumstances). The administrative framework is separate; after a federal court vacated the 2024 regulations in January 2025, OCR returned to the 2020 Rule, which remains the basis for its Title IX enforcement (U.S. Department of Education, 2025).

___ One case helps illustrate the point. At the pleading stage in Feminist Majority *Foundation v. Hurley*, the Fourth Circuit found the substantial-control allegations sufficient where Yik Yak posts originated on or near campus, concerned campus events, targeted university students, and some were allegedly transmitted through the university's wireless network.

For courts, counsel, and practitioners, the practical problem is identifying actual authority rather than using ownership or physical location as a shortcut. Universities can use the same inquiry as a governance map.

A Two-Axis Control Map

Axis One asks what authority the university has over the person whose conduct is at issue. Can it remove the person from the roster, revoke a captaincy or moderator role, restrict program access or travel, terminate program employment, or invoke the student-conduct process? A rostered player ordinarily presents a stronger case for institutional control than an anonymous opponent or unaffiliated spectator.

Axis Two asks what authority the university has within the setting. Separate program nexus (how closely the setting is tied to official program operations) from contextual control (what the university can actually govern there). Who administers the server? Who controls admission and permissions? Who moderates conduct or removes participants? Can staff change the environment or move official activity elsewhere?

An official team Discord administered by program staff may have a strong program nexus and substantial institutional control even though Discord owns the technology. A required tournament platform may be central to competition while leaving the university little authority over opposing players, shared game chat, or platform rules. The inquiry should identify those limits accurately.

Control Is Only the Beginning

A control map does not answer who receives notice or what happens next. A report may first reach a coach, director, graduate assistant, captain, or student moderator. Operational authority is not necessarily corrective authority. Schools should ensure reports of sex-based harassment reach the Title IX Coordinator or another official with corrective authority while giving players a route outside the competitive chain of command.

Platform action is another layer of the response. Discord may remove a message; a publisher may suspend an account. Those actions can matter, but they do not resolve questions involving roster access, scholarships, practice, travel, supportive measures, retaliation, evidence preservation, or university discipline.

Preventing Compliance Drift

Legal endogeneity highlights a practical risk: formal policies, offices, and routines may exist while reports stay with the team, evidence remains on personal devices, and platform moderation becomes the final response (Edelman, 2016). We describe this gradual disconnect as compliance drift, an organizational warning sign rather than a Title IX element or separate cause of action.

A short preseason audit can reduce that risk:

- **Map the program.** Identify official and program-endorsed digital settings, participants, program nexus, and university authority over people and settings.
- **Route reports.** Ensure reports of sex-based harassment reach the Title IX Coordinator or another official with corrective authority. Give players an option outside the competitive chain of command.
- **Preserve evidence.** Capture usernames, timestamps, messages, clips, and moderation records before content disappears.
- **Separate response layers.** Distinguish platform action, supportive measures, university discipline, and any Title IX process.

Universities do not need to monitor every conversation involving an esports participant, and courts should not presume that sponsorship creates control over the entire digital environment. Both should ask: Who can the university govern? What can it govern within the setting? Where does a report go? What authority remains after the platform acts?

Private platform ownership may limit university authority. It should not end the analysis before that authority has been identified.

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Counter-Strike Loot Boxes In The Crosshairs

By Darius C. Gambino

Loot boxes have been a part of video games for over 20 years, and they are not going away anytime soon. Recently, the New York Attorney General (Letitia James) made news for going after Valve Corporation and games like *Counter-Strike 2*, *Team Fortress 2*, and *Dota 2* for selling loot boxes, alleging that the practice constitutes illegal gambling under New York Law. Now, we have a consumer class action in Washington State alleging essentially the same thing. The lawsuit, styled *Flauto et al. v. Valve Corporation* (Civ. No. 26-cv-00788), was filed March 9, 2026 in the U.S. District Court for the Western District of Washington, and accuses Valve of knowingly operating unlawful gambling through its in-game loot box systems. Valve filed a Motion to Dismiss the Complaint in June, and that motion is now fully briefed and set for oral argument. So, let's take a look at the arguments on each side, and see what might happen as loot boxes are once again placed in the crosshairs.

The Complaint specifically names *Counter-Strike: Global Offensive*, *Counter-Strike 2*, *Team Fortress 2*, and *Dota 2* as having loot box systems that violate Washington's 'Gambling Money Lost' (RCW 4.24.070) and Consumer Protection (RCW 19.86.020) statutes. Valve's Motion to Dismiss levies several attacks, most notably, that the loot boxes contain only 'skins' that have no real world value ("A skin is an in-game cosmetic item, not a financial instrument."). While this may be true from Valve's perspective, skins are saleable both on the Steam Community Market for virtual currency, and on third party websites (e.g., Skinport, CSFloat and DMarket), for cash. As an extreme example, the "StatTrak Factory New AK-47 Blue Gem Pattern 661" skin for *Counter-Strike* publicly sold for $1,000,000.00 in June 2024. On this point, Valve notes that selling skins outside of Steam is a violation of the Steam Subscriber Agreement (SSA), and that they do not recognize such transfers as legitimate.

Valve also argues loot boxes are no different from a physical pack of sports cards, and that holding loot boxes to be gambling would "criminalize vast swaths of retail commerce" including things like baseball and Pokémon cards, blind boxes containing Lego minifigures or Labubus, comic book grab bags, and arcade games like Skee-ball that award tickets redeemable for prizes.

Finally, and quite interestingly, Valve posits that any interpretation of gambling law to cover loot box or mystery box openings would run afoul of the Fifth and Fourteenth Amendments, which require "fair notice" that a specific activity is criminal. Most of us know the Fifth Amendment for the right against self-incrimination ("I plead The Fifth!"), but it also dictates "due process of law" in criminal proceedings. The Fourteenth Amendment mandates "due process of law" in the laws of the individual States. With these Amendments as the backdrop, Valve argues: "No one of common intelligence would understand Valve's mystery boxes to be prohibited by Washington's gambling laws considering this context." All in all, some pretty powerful arguments.

The Plaintiffs respond, as you expect they might, by noting the high dollar values that skins have sold for in the past. From there, the argument goes – if they don't have value, then why would someone pay $1,000,000.00 for one?

Plaintiffs note that: (a) paying $2.49 to open a loot box is a stake in a game of chance, (b) players receive a random skin as a prize, and (c) skins are exchangeable on the Steam Community Market for virtual currency, which can be used to buy both physical and digital items. Thus, Plaintiffs argue, buying a loot box is gambling.

As to the constitutional arguments, Plaintiffs respond that "fair notice" is an "objective test," and objectively, a "person of ordinary intelligence" would understand that Valve's practice is prohibited. Plaintiffs point to regulatory actions in other countries that banned loot boxes as gambling - "the Belgian Gaming Commission and the Netherlands Gambling Authority each independently determined that loot boxes constitute gambling under their national laws—and Valve shut its loot boxes down in both countries."

Plaintiffs are perhaps most persuasive in attacking the 'baseball card' analogy, when they note:

> Topps does not operate a proprietary exchange where every card is priced, listed, and sold for credits redeemable only at the Topps store. Topps does not require its customers to sign an agreement confining all value to the Topps ecosystem. And when a customer opens a pack and finds a valuable card, Topps does not take a cut when that card is resold. Valve does all of these things, and it does them at enormous scale. What Valve built is not a product with a surprise inside. It is a casino from which it has unlawfully collected billions of dollars in revenue.

In the case of baseball cards, the marketplace is open – no one controls what a baseball card sells for as between willing market participants. The difference here is that Valve owns and controls both the Steam Community Market (the marketplace) and the video games (the cards). But does Steam's control of the marketplace turn an activity into gambling if it otherwise would not be? This is one of the key issues that the

One aspect of many loot box ecosystems that has not received enough attention is the ‘house take’ or ‘transaction fee’. When a player sells a skin or virtual card in an online marketplace, the video game publisher takes a percentage of the sale. Many gamers consider transaction fees to be unfair, but they accept them as the price for playing the game. In the Steam Community Market, the platform takes 15% of each transaction, meaning the seller only receives 85% of their selling price. If the “Pattern 661 AK-47” had been sold on the Steam Community Market, Valve would have taken $150,000.00 in virtual currency on the deal. In games like *NBA 2K* and *Madden*, the transaction fee is 10% to sell virtual player cards. Plaintiffs mention this transaction fee only briefly in their arguments. It is possible that this transaction fee may be important to the court’s decision, because it shows that the relevant marketplace is not just controlled by the publisher, but that they are directly profiting from it (if only in virtual currency).

The flip side is that legal auction platforms like eBay also take a cut from sellers when things of value are sold, and this helps them operate the platform ‘free of charge’ to buyers. Valve could likely not operate the Steam Community Market without funding from transaction fees (or they would need to spend out of pocket to do so). The court in *Flauto* has many difficult issues to resolve, and until it does, loot boxes will continue to be in the crosshairs.

The "Oswaldinato" Problem: What the EA Sports Litigation in Brazil Means for Every American Company That Uses the Image of a Brazilian Athlete

By Caroline Nogueira Costa

More than a decade of litigation was required to resolve the legal dispute between Brazilian soccer players and EA Sports FC, which is responsible for the FIFA video game franchise (now EA Sports FC). To understand what happened, it is necessary to clarify the role of each stakeholder in this case, which transformed the way image-rights contracts involving Brazilian athletes are negotiated.

Caroline Nogueira Costa

FIFPro is a nonprofit organization that acquires image rights from affiliated players' unions and negotiates their sale to video game companies such as EA Sports. The company claims to have negotiated with Fenapaf (Brazilian Federation of Football Athletes) the transfer of image rights for players who play in Brazil for use in FIFA and Pro Evolution Soccer (PES).

The entities had negotiated licensing rights to athletes' images for the game, but Brazilian courts deemed the agreement null and void, even though this practice is standard throughout Europe. The courts ruled that Fenapaf lacked authority to negotiate the use of athletes’ images without each athlete's individual consent. Thus, FIFPro, which acquired these rights to later pass them on to EA Sports, paid for something that the "seller" (Fenapaf) had no authority to sell. A flood of lawsuits filed by Brazilian soccer players over the unauthorized use of their images followed.

By 2017, Brazilian media reported that the combined damages sought in cases against EA Sports exceeded R$100 million. The litigation contributed to the complications surrounding EA's licensing of Brazilian players, who have subsequently been represented by generic players in editions of the game.

Brazil still appears as a national team in FIFA games (now EA Sports FC), but the player roster has been replaced with fictional characters to avoid further losses. The team includes “Oswaldinato,” an unlicensed version of the athlete Gabriel Barbosa (Gabigol), a striker for one of Brazil's most popular teams, Flamengo.

The entire controversy centers on a licensing structure that failed to account for Brazilian law.

Peculiarities of image rights in Brazil

In the professional football market, agreements such as those between FIFPro and EA Sports are considered valid and sufficient to authorize the display of athletes' images in video games. FIFPro, after negotiating with the federation that represents Brazilian athletes, secured these rights with the company that produces the games. The model works in practically every part of the world. The error in the Brazilian case was not in the drafting of the contract but rather in the understanding of the Brazilian legal reality, which treats image rights in a peculiar way.

In the United States, image rights are protected under the so-called right of publicity and can be licensed, assigned, and, in some states, transferred after death. The legal nature of image rights varies by state and may take on characteristics of property rights.

The situation is somewhat different in Brazil, where, according to the Brazilian Federal Constitution and the Civil Code, image rights are classified as a personality right. This means that, under Brazilian law, image rights are associated with human rights, along with others such as honor and privacy. Therefore, image rights are considered non-transferable and inalienable, although they can be economically exploited through a civil contract. In Brazil, lifetime image rights assignment contracts are not accepted because image rights cannot be negotiated irreversibly and indefinitely; however, fixed-term agreements are legal and used in the sports world to separate the player's salary from the exploitation of their image. Thus, in Brazilian football, the hiring of an athlete requires, at a minimum, two contracts: the employment contract, which formalizes their rights and duties as an employee of the team, and the image rights contract, which stipulates the rules and the payment due for its exploitation for a determined period.

Under the General Sports Law (Law No. 14,597 of June 14, 2023), up to fifty percent of the total monthly amounts received by an athlete while part of a football team may be linked to the image rights contract. For example, if a player's hiring includes a total monthly payment of one million dollars, up to five hundred thousand dollars may be paid through the exploitation of the athlete's image, with the remaining amount paid as labor compensation. The consequences of violating this framework are not theoretical.

Why the FIFPro License Had No Legal Value in Brazil

Understanding the outcome of EA's litigation in Brazilian courts requires recognizing that, under the Brazilian Federal Constitution and the Civil Code, image rights are personal, non-transferable, and inalienable. In this sense, the lawsuit involving the American company demonstrates that a lack of knowledge about the peculiarities of Brazilian law led to a contract with someone who lacked the authority to assign the rights.

Although the signed contract followed the standardization accepted in most countries, it disregarded the constitutional principles that govern personality rights, including athletes' image rights.

Because image rights are a highly personal right, no third party can authorize their use on another's behalf. The club, the federation, the sports agent, no one can negotiate a Brazilian athlete's image except the athlete himself. The authorization must come directly and personally from the athlete. This was the first error in the contract signed between FIFPro and Fenapaf, which lacked the authority to negotiate the players' images collectively.

Even when there is an unequivocal, direct manifestation by the athlete, the authorization must be specific, not generic. Thus, any general and comprehensive authorization clause must be express and specific; a generic assignment is not enforceable. According to Brazilian jurisprudence, image rights authorization contracts are interpreted restrictively. A general clause granting "all commercial uses" of an athlete's image has no legal effect. The contract must enumerate each specifically authorized use, specifying the means, platform, territory, and term of validity. Authorization for use in print advertising does not extend to the digital environment. Authorization for use in a specific edition of a video game does not cover subsequent editions. Each category of use requires its own express authorization.

What American Lawyers Should Do

The golden rule that should guide contracts involving the assignment of image rights of Brazilian athletes is that they must be made through an autonomous civil instrument. Even if other legal agreements are in effect concurrently, the terms of the assignment must be detailed, specifying the means, platform, format, and territory where the right will be exploited. In addition, the athlete's signature is required. Even if a federation, a club, or a sports agent is involved, the player's clear and unequivocal consent is mandatory to ensure the document's enforceability. A global authorization is not a valid substitute.

Brazilian courts have issued rulings prohibiting representation in image rights negotiations. Thus, no other arrangement can replace the athlete's consent. Even though image rights are exploited through a company created by the athlete for that purpose, which is possible and widely accepted to achieve tax benefits, the constitutive documents of such a legal entity need to be carefully analyzed to confirm that it has the necessary authority to transact.

If the American company has operations in Brazil, it can be sued in Brazilian courts, even if clauses specify a different jurisdiction. Furthermore, in many cases, image rights are negotiated as general clauses in other contracts, such as employment or sponsorship contracts. This generic transfer of image rights, without a specific and detailed document, is not enforceable and can leave the contracting parties severely vulnerable.

Finally, in the case involving FIFPro and EA Sports, the losses far outweighed the value of prior legal advice. Specialized Brazilian legal counsel with expertise in national sports law would have prevented the unpleasantness the companies in question experienced.

Conclusion

The losses incurred by the American companies in this case stemmed from the legal incompatibility between the regulations accepted in most sports markets and Brazilian law. The result was a significant financial loss, which could have been avoided by hiring specialized Brazilian legal counsel. In Brazil, where image rights are recognized as a personality right, the specificities inherent in these contracts become even more relevant in the sports environment.

Syracuse's Travis Yang on Who Makes the Rules in Collegiate Esports

By Holt Hackney

As collegiate esports expand, universities are confronting legal and policy questions that often differ from those in traditional athletics. Travis Yang, director of esports competition at Syracuse University, discusses the evolving landscape, including player status, NIL opportunities, intellectual property, online harassment, data privacy and commercial partnerships. Yang also examines how universities, leagues and game publishers share responsibility for competitive integrity and student welfare as collegiate esports programs become more structured and prominent.

Travis Yang

Hackney: As collegiate esports programs become more formalized, what legal or policy issues arise when determining whether players should be treated as students, athletes, employees or some combination of the three?

Yang: A key factor for student-athletes in this area is the fact that the NCAA currently lacks both jurisdiction and general presence in the collegiate esports environment. Generally, esports student-athletes are free to pursue their own "NIL" and branding deals, with little to no oversight apart from their own institution's program. This is gradually changing year-to-year as organizations like the Power Esports Conference and National Association of Collegiate Esports (founded by the NAIA) produce more legislation and guidelines for their members.

Hackney: How does Syracuse address ownership and licensing questions involving game publishers, including the use of game footage, logos, broadcasts and other intellectual property during competitions?

Yang: Game publishers like Riot and Blizzard who produce major competitive titles rarely (if ever) step in to enforce at a program level. Larger organizers of collegiate esports competitions are generally expected to apply for licensing from the publisher ahead of a season/tournament/etc. In many instances, licensing isn't required for smaller tournaments/conferences because the event falls within a certain threshold already established by the publisher (e.g. 'X' publisher allows tournaments with <$10,000 in prize pool to operate without applying for approval).

Similarly for broadcasts and in-game footage, many publishers have explicit policies that encourage content creation around their titles.

It is more common to see issues arise between institutions and logo usage of opposing teams, as certain schools require that their esports programs use a specialized logo. However, this is difficult/impossible to convey externally if your opponent runs their own broadcast.

Hackney: What safeguards should universities establish to protect esports players from harassment, discrimination, and toxic online conduct, particularly when incidents occur on third-party gaming or communication platforms?

Yang: While no program can fully protect students in an online environment, it is important to prepare students accordingly as early as possible. Creating guidelines and policies around expected behavior in online arenas can help students determine whether they need to remove themselves from a situation or take further action (e.g. reporting abuse through in-game mechanisms, filing a Title IX complaint against another student). At Syracuse we provide specialized training and resources for our student-athletes before the season begins, as we compete across multiple titles and incorporate 3rd party communications platforms.

Hackney: Esports competitions can involve extensive collection of player data, voice communications and performance statistics. What privacy and ethical considerations should universities weigh when gathering, reviewing or sharing that information?

Yang: This is a largely unexplored topic at the collegiate level. Students should be made aware whenever possible the extent that their data is collected and used. Whether it be as simple as communication recorded in video content or understanding that their NIL may be used by an event organizer as a part of attending and competing. Unfortunately, we currently have little insight or say in what the developers/publishers collect through their games, thus making it difficult for programs to fully understand the implications before adopting a title.

Hackney: How should collegiate esports programs manage potential conflicts involving sponsorships, gambling-related companies, energy-drink brands or other commercial partners whose interests may not align fully with student welfare?

Yang: The challenges that collegiate esports programs face are largely similar to those in traditional athletics. Successful programs must first ensure that they align with existing institutional partnerships and sponsorships (e.g. Nike/Coke school). At Syracuse when we have conversations with potential partners, our development team is heavily involved in vetting and understanding the nature of the business and what the relationship might look like. Ultimately student welfare is the north star and is what we look at for whether a sponsorship/partnership is worthwhile. We have yet to encounter situations broadly or from individual student-athletes where this has become an issue, but we continue to monitor.

Hackney: When disputes arise over cheating, account sharing, use of prohibited software or other competitive-integrity issues, what does a fair disciplinary process look like, and how much authority should rest with the university, tournament organizer or game publisher?

Yang: For issues like cheating or account sharing, disciplinary action can take place at the developer, league, and program level. Competitors found cheating would be violating the game's terms of service, league rules, and student-athlete policies. While the developer ultimately has final control over access to their IP and implements active anti-cheat detection, most of the time we see these violations caught and sanctions enforced at lower levels. I believe the league should take action to ensure competitive integrity while the program must focus more on damage control for their brand and student development, based on their institutional policies.

Esports Lawyer Looks at Sony's Move Away From Physical Games and the Questions It Raises About Digital Ownership

By Holt Hackney

Sony Interactive Entertainment's decision to stop making physical discs for new PlayStation games beginning in January 2028 is part of a broader gaming industry shift toward digital distribution. But the move also raises questions that extend beyond manufacturing costs and consumer preferences to ownership rights, competition and Sony's increasing control over the PlayStation marketplace.

Sony announced July 1 that new games released after the transition will be available through the PlayStation Store and retailers only in digital formats. Games released before January 2028 will not be affected. Sony said the decision reflects consumers' growing preference for digital media over physical products.

There are also significant economic incentives.

Games industry analyst Piers Harding-Rolls said the elimination of discs was inevitable because physical production pushes more money outside the Sony ecosystem while adding manufacturing and distribution costs.

"No fee for printing the disc and shipping it out means there's more share for Sony and publishers," Harding-Rolls said, according to *GamesRadar*.

Digital distribution can also give Sony greater control over transactions within the PlayStation ecosystem. Physical games can be bought from competing retailers and then sold, traded or lent. Digital distribution operates under a different model in which access and transfer rights are generally governed by platform licenses and terms of service.

The distinction between physical and digital ownership has become more important as entertainment moves online. People who own physical copies have generally been able to resell them legally under copyright law's first-sale doctrine. Digital products present different legal issues because consumers often acquire licenses rather than ownership of a transferable copy.

___ This presents a good news/bad news scenario for consumers.

___ "The consumer loses the right to

physically own the game and transfer it to another party at will," said Darius Gambino, a Partner at Saul Ewing and Editor-in-Chief of ESL. "This type of control can still exist in the digital world, so long as the publisher is willing toparticipate and allow the buyer to freely transfer the digital copy. The transfer to digital may also have some benefits that could not have existed in the physical world, such as theft/damage prevention, and the right to own a game across various platforms (i.e., Sony, Microsoft, Steam, Nintendo, etc.).

The shift could also put Sony in a stronger position as a gatekeeper of PlayStation transactions. Sony operates the PlayStation Store, the primary marketplace for digital PlayStation games. Eliminating physical discs removes one of the remaining channels through which retailers and consumers can buy and sell PlayStation games independently of Sony's digital storefront.

Does this create antitrust questions?

"Not necessarily," offered Gambino. "In the case of the 'Big 3' (Sony, Microsoft, Nintendo), they were distributing the physical copies previously, so moving to a digital distribution should not change much in terms of competition. The concern would be that those 3 entities could collude to set parameters for digital copies that are anti-consumer. Since Nintendo has said that it will continue to make physical cartridges, I don't see that happening."

Sony's decision comes at a time when the economics of console gaming are under pressure. Harding-Rolls said rising component costs, driven partly by demand from artificial intelligence infrastructure and memory shortages, could threaten the traditional console business model. He said a next-generation console priced around $1,000 would severely limit its potential audience.

Dropping disc support around the expected transition to the next PlayStation generation could help Sony reduce hardware and distribution costs. Harding-Rolls described the timing as a potential clean break between generations.

___ For Sony, a largely digital ecosystem also diminishes the importance of the used-game market. When a consumer resells a physical game, neither Sony nor the publisher necessarily receives revenue from that second transaction. A digital ecosystem can make resale much more difficult or eliminate it entirely.

Does this evolve into a consumer protection issue?

This is no different from when record labels stopped making vinyl and cassette tapes in the 90s," said Gambino. "Yes, there were still physical options in compact discs, but the labels had more control over what you could do with a CD. Today, very few people even want to own digital files anymore. And beginning about 15 years ago, the nostalgia for vinyl brought them back, both vintage and new. So, I don't think the secondary market for physical games will ever go away completely, but we are moving into a time when I think those physical copies become more valuable to collectors. I actually think that publishers have a tremendous opportunity here to do 'limited run' physical copies for the collectors that want them. You could do a limited run of say 5,000 physical copies of a game and charge $200.00 a piece for those copies (as opposed to the standard $69.99)."

The change has generated opposition among some PlayStation users concerned about game preservation, affordability and control over purchased content. Recent backlash has included online calls for consumers to boycott PlayStation products and services.

Those concerns also highlight an important difference between discs and downloads: Access to digital games can depend on platform infrastructure and contractual policies. Sony also addressed changes involving its older PlayStation 3 and PlayStation Vita digital storefronts when announcing the physical-disc transition.

___ For publishers and Sony, however, digital distribution brings advantages that physical products cannot. It eliminates disc manufacturing, packaging and shipping while allowing software to be distributed quickly and broadly.

___ The larger question may be whether laws developed around ownership of physical products are sufficient for an entertainment industry increasingly built around licenses and controlled digital ecosystems.

"If the video game publishers don't do the right thing when it comes to digital ownership, then legislation will definitely be needed," said Gambino. "Digital copies need a defined 'lifespan', after which the publisher has no obligation to support them. Say that publishers think it is reasonable to support a game for 10 years, but consumers think 25 years is better. The publishers will cite the cost of maintenance, and legislation may be needed to bridge the gap. That said, I do believe that publishers will do the right thing when it comes to supporting digital copies."

Skillz

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identical, to the claims Skillz made against Papaya.

Although still pending in court, the Skillz-Voodoo lawsuit involves several relevant considerations worth addressing for platforms and users in the mobile gaming market.

Background

The mobile gaming market is vast and rapidly growing. Users spent $197.3 Billion on mobile gaming in 2025. That number is expected to reach $400.6 Billion by 2034. There are over 3.5 Billion users worldwide, with over 4.2 Million mobile game downloads per day.

Founded in 2012, Skillz is a mobile gaming platform that connects users with games created by third-party developers. Skillz offers arcade, puzzle, and card games. Voodoo's business model is the same, except that, in addition to connecting users with games created by third-party developers, Voodoo also offers its own games to users. Its "Blitz Win Cash" application offers arcade, puzzle, and card games too.

Both platforms facilitate tournaments and head-to-head matchups, where users wager money, and cash prizes are awarded. Both platforms claim that, in facilitating head-to-head matchups, they match users with other human users at similar skill levels.

In 2025, Skillz earned $104.5 Million in revenue, while Voodoo earned $778 Million.

The Case

On July 1, 2024, Skillz filed the complaint and motion for preliminary injunction against Voodoo in the Southern District of New York (before Judge Broderick), alleging false advertising claims in violation of the Lanham Act and the New York General Business Law. Skillz principally argues, among other things, that Voodoo's characterization of Blitz Win Cash as bot-free constitutes false advertising, because Voodoo actually utilizes bots. To show that Voodoo utilizes bots, Skillz relies on disclosures of a former Voodoo employee, along with Google reviews submitted by users which allege that Voodoo utilizes bots.

Skillz further alleges that Voodoo's conduct has wrongfully led to lost profits and a diversion of market share from Skillz to Voodoo. According to Skillz, the usage of bots provides Voodoo with an advantage because Voodoo can provide users with competitions much faster than Skillz since Voodoo can match a user with a bot, which is always available, while Skillz matches a user with a human user, which depends on the availability of the user.

Skillz also argues that Voodoo operates an illegal gambling activity because the usage of bots involves chance, which is an element of gambling under New York law, and due to this, the user's skill is less likely to influence the outcome of the game.

On October 16, 2024, Voodoo filed a motion to dismiss Skillz' complaint. Voodoo principally argued, among other things, that Skillz failed to allege that it suffered harm due to Voodoo's conduct because: (i) Skillz and Voodoo do not compete for sales since the games offered by Skillz are created by third-party developers; (ii) even if they compete for sales, the mobile gaming market is vast, and therefore, Skillz' decreased revenue and market share could be a result of any other competitor; and (iii) Skillz' alleged harm does not impact the public at large. Voodoo further argued that its "fair" and "skill-based" characterizations are non-actionable statements of opinions, and that a recently-conducted audit of Voodoo demonstrated that bots are not used. Voodoo also requested that Skillz' gambling allegations be stricken because they are not pertinent to Skillz' claims, reflect unnecessarily on Voodoo's character, and are otherwise insufficient to constitute gambling. Almost two years later, Voodoo's motion to dismiss remains pending.

On March 13, 2026, however, Judge Broderick formally denied Skillz' motion for preliminary injunction. The court held that injunctive relief is unnecessary because Skillz unjustifiably waited seven weeks after discovery of Voodoo's conduct to move for a preliminary injunction. The court also found that Skillz failed to offer evidence demonstrating that its own sales position, or the overall mobile gaming market, were harmed by Voodoo's conduct. The parties are now in discovery.

Relevant Considerations

Mobile gaming platforms and users alike should pay close attention to the Skillz-Voodoo lawsuit. As it progresses, the lawsuit will likely result in findings that impact how platforms provide their services, and which platforms users should trust.

As a platform, should we utilize bots and if so, how do we avoid liability?

Nothing affirmatively prevents a mobile gaming platform from utilizing bots. However, whether a platform should utilize bots depends on consideration of at least two factors. First, the platform should consider the impact that the usage of bots may have on the user's interest in using the platform. Because bots are created by algorithms, users may lack trust that the platform is providing a "fair" competition. In turn, there is a risk that a platform loses market share to (or performs less favorably than) a competitor who does not use bots. Second, the platform should consider whether its usage of bots amounts to a gambling practice. If a bot significantly controls the outcome of a game, as opposed to the skill of the user, there is a risk that a platform is offering a gambling service and, therefore, is subject to state gambling laws, which is accompanied by additional expenses and legal obligations for the platform. If a platform decides to utilize bots, it should expressly disclose such usage to users and ensure that the skill of a user is still a significant factor in the outcome of a game.

As a user, should I use a platform that utilizes bots?

Users can obviously engage with whatever mobile gaming platform that they want. However, a user should understand which platforms utilize bots for at least one reason. Unlike a human user, a bot is controlled by an algorithm created by the platform. That does not mean that the bot is always a tougher competitor than a human user, but it does mean that the bot is the product of an algorithm, rather than a human. Therefore, users should at least be diligent about the potential for abuse and unfairness in this arrangement (i.e., the platform making the bot impossible to beat). Ultimately, users have legal recourse against platforms under state consumer protection laws in the event that a platform employs illegal or abusive practices, such as false advertising or illegal gambling activities.

The eyes of the mobile gaming world should stay on the Skillz-Voodoo lawsuit. Its resolution will likely have far-reaching effects on both platforms and users. If Skillz achieves another 9-figure recovery, it could have major ramifications for online gaming services that utilize bots in secret. In the meantime, platforms should ensure that they are accurately portraying their services to the public, and users should remain vigilant while accessing these platforms to avoid any harm or surprise.

Horizon

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of the Horizon Franchise and provided images of team members playing the games, including high-ranking trophies the employees had earned: (*See Image 1)*

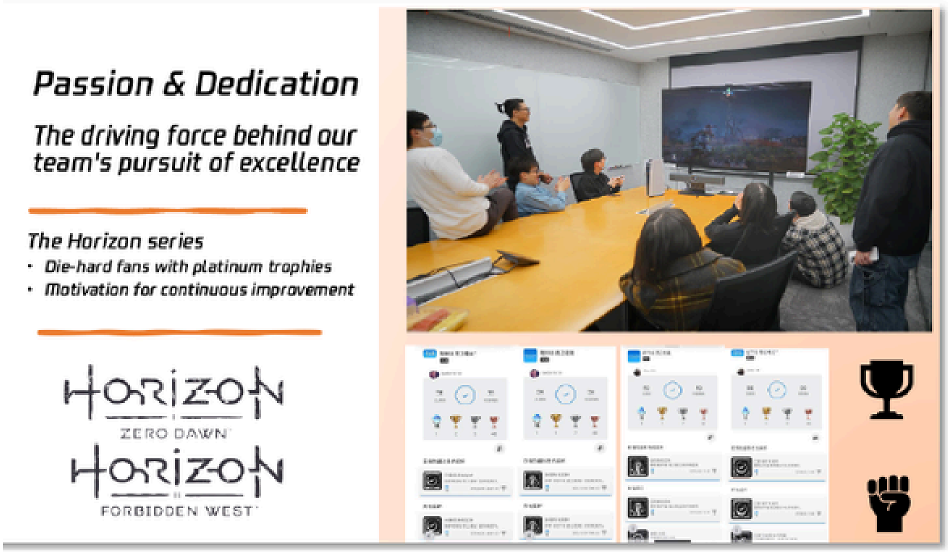

Image 1

Tencent pitched the mobile game for the Horizon Franchise and suggested many additional gameplay elements such as crafting, pet taming, multiplayer modes, etc. What the March 2024 pitch did not include or disclose is how Tencent was already working on a game based on the *Horizon* Franchise.

Sony rejected Tencent's pitch on April 8, 2024 and offer for a license to the *Horizon* Franchise's intellectual property. Then in November 2024, Tencent launched the *Light of Motiram* Steam page. Sony instantly suspected *Light of Motiram* was based off of the development project pitched to Sony by Tencent in April 2024. The similarities, which were immediately picked up by the public at large and subject to numerous articles, were notable. Seven months later, Sony filed suit.

But Tencent was not without its defenses. Beyond arguments regarding a lack of jurisdiction over the named defendants, Tencent also seized on the fact that Sony presented no consistent identification or federal trademark for the Aloy character, noting that in the Complaint alone Aloy was presented with six different appearances. See Sony Interactive Entertainment, Inc. v. Tencent Holdings Ltd., et al, No. 3:25-cv-6275, Dkt. 48 ("Motion to Dismiss") at 26. In each Aloy's attire, facial markings, and accessories were different. (Id. at 26-27.) Tencent argued any trademark claim failed because there were insufficient allegations identifying the trademark with any specificity, and that Sony had failed to tie Aloy to a particular good or service or as a "source identifier in commerce."

Notably, Tencent failed to connect critical facts in its briefing to its trademark defenses: that Sony ripped off Horizon from another video game, "Enslaved: Odyssey to the West." See Motion to Dismiss at 12. Tencent went so far as to note that the art director, Mr. Jan-Bart Van Beek, had stated he did not think the *Horizon* project should go forward because "it touches too much of these other points" in the *Enslaved* project. *Id.* at 12, n.2. The *Enslaved* world also included a post-apocalyptic world overrun by vegetation and a red-headed protagonist who fought animal like machines.

How did Enslaved play into Sony's decision not to get a federal trademark for the Aloy character, or Sony's alleged failure to identify Aloy's unique and protectable features? And why did Sony never seek a formal copyright or trademark for Aloy? These are questions Tencent did not answer, and did not connect to their defense regarding Sony's alleged trademark deficiencies. In doing so, Tencent left behind the opportunity to draw a connection and tell a story behind Sony's own use of the alleged common elements to the *Horizon* and Aloy character to its own common law trademarks and *Enslaved*'s IP. Tencent's defenses instead were primarily directed towards its lack of personal jurisdiction argument.

Sony responded with vigorous opposition and a motion for a preliminary injunction to stop the launch of *Light of Motiram* on October 16, 2025. *See Sony Interactive Entertainment, Inc. v. Tencent Holdings Ltd., et al,* No. 3:25-cv-6275, Dkt. 67. Both the motion to dismiss and preliminary injunction were set for January 29, 2026.

However, on December 17, 2025, the case was settled, with all parties bearing their own costs and fees. *See Sony Interactive Entertainment, Inc. v. Tencent Holdings Ltd., et al,* No. 3:25-cv-6275, Dkt. 84. While the terms of the settlement are not public, the *Light of Motiram* can no longer be found on any PC storefronts, and development in the U.S. appears to have been suspended indefinitely. *See* *https://www.thegamer.com/light-of-motiram-delisted-horizon-lawsuit/* (last accessed August 1, 2026).

There are many reasons why this case may have settled before any public hearing, but it is notable that the settlement must have included an agreement to shelve *Light of Motiram* (not even a license would do). That is a major capitulation on Tencent's part, and an unspoken acknowledgement at least of the seriousness of Sony's claims. With no judgment from the court as to Tencent's defenses, why was the matter resolved with such relative quickness and little fanfare?

The reality is that Sony told the better story in the public eye. Sony had the momentum behind it of a fervid fan base that immediately recognized and compared Tencent's *Light of Motiram* game to *Horizon* and were outraged at the "rip-off." Even if Light of Motiram had been permitted to be released in the U.S., the damage to Tencent's goodwill for the game was already gone. And beyond the elements of Aloy's character being subject to trademark or not, the optics of a meeting in 2024 to pitch an expansion of Horizon followed by a release of an incredibly similar concept upon rejection would likely be too much for a jury to ignore. Tencent's decision to cut its losses is therefore unsurprising.

Ironically, Tencent had a good story to tell as well regarding Sony's potential rip-off of the Enslaved game. While it makes sense that the focus of the motion to dismiss was on jurisdictional issues (as disputes over what constitutes a trademark is almost always a factual matter a judge will leave to a jury), Tencent still could have woven a good story about how Sony ripped off the key elements of its Aloy character from the Enslaved game: a red-headed protagonist in a post-apocalyptic world, overrun by vegetation and with giant mechanical beasts. The fact that Sony initially walked away from the Horizon project in light of the Enslaved IP is ample evidence to weave a counter-narrative to fight "rip-off" fire with "rip-off" fire. But again, by then, the damage to the public goodwill to the Light of Motiram game would have already been done.

While every case is different, it is important to remember the story. More often than not that cohesive narrative you weave is what the jury and the public will latch onto. It may also make or break your case both in and outside the courtroom.